

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

MFA.No. 558 of 2002(B)

OPMV.1267/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

APPELLANT: PETITIONERS

1. K.CHINAMMU,AGED 45 YEARS W/O.DECEASED
VELAYUDHAN,CHANDANAKANDY MEETHAL,PURUVAYAL AMSOM,
KAYALAM DESOM,KAYALAM P.O.,KOZHIKODE TALUK
2. BINDU T.,AGED 30 YEARS D/O.DECEASED
VELAYUDHAN, INSANE (REPRESENTED BY MOTHER
CHINNAMMU
3. ANILKUMAR T. AGED 27 YEARS S/O.DECEASED
VELAYUDHAN,CHANDANAKANDY MEETHAL,PERUVAYAL AMSOM
KAYALAM DESOM,KAYALAM P.O.,KOZHIKODE DISTRICT
4. BAIJU T. ED 25 YEARS,S/O.DECEASED
VELAYUDHAN,CHANDANAKANDY MEETHAL,
PERUVAYAL AMSOM,KAYALAM DESOM,KAYALAM P.O.,
KOZHIKODE TALUK.
5. JYOTHI T.,AGED 19 YEARS D/O.DECEASED
VELAYUDHAN,CHANDANAKANDY MEETHAL,PERUVAYAL AMSOM,
KAYALAM DESOM,KAYALAM P.O.,KOZHIKODE TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN
SMT.MARY ANNE JOSEPH

RESPONDENTS: RESPONDENTS

1. BALAKRISHNAN S/O.CHANDUKUTTY,AGED 58
YEARS,KUNATHADAYIL HOUSE,CHERUPPA AMSOM DESOM,
KOZHIKODE
2. M.ABDULLA,AZHINILATHU VEEDU,MAVOOR AMSOM
DESOM,P.O. MAVOOR.
3. THE ORIENTAL INSURANCE COMPANY LTD.,

BRANCH OFFICE,KINGSWAY BUILDING,MAVOOR ROAD,
KOZHIKODE.

BY ADV. SRI.K.A.SALIL NARAYANAN
SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 558 of 2002

Dated this the 6th day of September, 2007.

JUDGMENT

Koshy, J:

Husband of the first appellant died in a motor accident on 2.11.1991. While he was riding a scooter having registration No.KL-11/7396 from west to east along the road at Cheroopa, a lorry KLZ-4214 driven in a rash and negligent manner hit the scooter. The deceased was aged 44 and he was employed in the Kerala State Electricity Board. His wife was 36 years at the time of accident and he left two sons and 2 unmarried daughters. Two of the children are minors at that time. His wife and children claimed a compensation of Rs.8,00,000/-. The Tribunal assessed the compensation at Rs. 2,55,300/-. But, the claim was dismissed stating that accident occurred due to his own negligence. The question of negligence as well as the quantum of compensation are challenged by the appellants.

2. With regard to negligence, of course, PW1 has not seen the accident. PW2, an eye-witness has stated that the accident occurred

while the lorry was recklessly overtaking another vehicle. The driver of the lorry as RW1 gave evidence that there was no negligence on his part and scooter driver was negligent. But he was an interested witness. The police charge-sheeted RW1. On a preliminary investigation, the police came to the conclusion that he was negligent. Even though subsequently, the case was referred because the claimant was only interested in compensation and not interested in punishing the driver. According to the Tribunal, scene mahazar would show that accident occurred on the wrong side of the rider of the motor cycle. Learned counsel for the appellants submit that lorry was on the wrong side. For this the Tribunal observed as follows:

“If at all it could be presumed that the lorry was proceeding through the wrong side, the deceased should have swerved his vehicle towards the north”.

3. This is a head on collision. Scene mahazar is taken much after the incident. When a heavy vehicle hits a scooter the position of scooter will change and on that basis we cannot fix the exact spot of incident. When there is overwhelming evidence to show that the accident occurred while the lorry was overtaking but, at the same time, the scooter driver ought to have been cautious to avoid an accident. Therefore, we are of the opinion that negligence can be attributed both sides equally. On going through the findings, it can

be seen that just and reasonable compensation was awarded. Therefore, 50% compensation assessed by the Tribunal (Rs.1,27,600) shall be deposited by the 3rd respondent Insurance Company with 9% interest from the date of application with proportionate cost. On deposit of the amount, 1/3rd of the same shall be disbursed to the 1st appellant and balance amount on equal proportion to other claimants viz. appellants 2 to 5.

Appeal is allowed.

Sd/-

**J.B. KOSHY,
Judge.**

Sd/-

**K. HEMA,
Judge.**

Krs.

// True copy //

P.S. to Judge.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 558 of 2002

4th day of September, 2007.

JUDGMENT